

U. S. DEPARTMENT OF TRANSPORTATION
OFFICE OF HEARINGS
WASHINGTON, D.C.

IN THE MATTERS OF
TAUGHANNOCK AVIATION CORP.

FAA DOCKET NOS. CP08EA0001,
CP08EA0002 AND CP08EA0005
(Civil Penalty Actions)
CONSOLIDATED

DMS NOS. FAA-2007-0355, 2007-0356
AND 2008-0236

HONORABLE ISAAC D. BENKIN
ADMINISTRATIVE LAW JUDGE
Hearing Date: February 3, 2009
Hearing Location: Syracuse, NY

RECEIVED

JAN 26 2009

HEARING DOCKET

DEPT. OF TRANSPORTATION
DOCKET
JAN 26 2009

**RESPONDENT'S REQUEST
FOR AN INTERLOCUTORY APPEAL FOR CAUSE
OF THE ADMINISTRATIVE LAW JUDGE'S ORDER
DENYING RESPONDENT'S MOTION FOR DECISION
AND GRANTING COMPLAINANT'S MOTION FOR DECISION
IN DOCKET NO. FAA-2007-0356 SERVED ON JANUARY 7, 2009**

COMES NOW, Taughannock Aviation Corp. (hereinafter "TAC"), Respondent herein, by and through undersigned counsel, pursuant to Rule 13.219 of the Procedural Rules (14 C.F.R. Part 13), and respectfully requests leave to file an interlocutory appeal for cause of the Administrative Law Judge's Order Denying Respondent's Motion for Decision and Granting Complainant's Motion for Decision in Docket No. FAA-2007-0356 served on January 7, 2009. As more fully discussed herein, delay of the appeal in Docket No. FAA-2007-0356 would result in undue prejudice to all parties involved. In support thereof, Respondent states the following:

By Notice served on January 8, 2009, the Honorable Isaac D. Benkin, Administrative Law Judge, set a hearing date for February 3, 2009, concerning three consolidated actions (i.e., DMS Docket Nos. FAA-2007-0355, 2007-0356 and 2008-0236). The consolidated cases do not involve the same set of facts or circumstances and thus, each are separate and distinct. As a result, each case requires different evidence and testimony (including expert testimony) in order to establish the necessary elements for a defense in each of the three separate actions. Accordingly, Respondent will be required to call different witnesses and present different evidence in defense of each action.

By Order served on January 7, 2009, the Honorable Judge Benkin denied Respondent's motion for decision and granted Complainant's motion for decision regarding DMS Docket No. FAA-2007-0356. Specifically, Docket No. FAA-2007-0356 concerns the accuracy of a load manifest that the Respondent prepared for a series of flights undertaken by one of its aircraft in January 2006. The flight had three legs and the flight involved four listed crewmembers. Nielsen, Sabin, Foote, and Daniel Dominguez. Nielsen was the pilot-in-command, and present aboard the aircraft, for only the first leg of the flight. Captain Dominguez was the pilot-in-command for the second and third legs of the flight.

The law judge specifically found that Captain Dominguez "was not listed as the pilot-in-command on the load manifest. This rendered the load manifest inaccurate." See Order at 2. Furthermore, the law judge stated that "*Both parties agree* that the load manifest for this operation did not list Captain Dominguez as the pilot-in-command for those legs of the operation. And *both parties agree* that Captain Nielsen was listed on the manifest as the pilot-in-command for all three of the legs." Order at 3 (emphasis added). As a result, the law judge concluded that

the Complainant FAA is entitled to summary disposition on the issue of the Respondent's liability in Docket No. FAA-2007-0356. Order at 4.

Although the law judge found that "*Both parties agree* that the load manifest for this operation did not list Captain Dominguez as the pilot-in-command for those legs of the operation", the affidavits provided as exhibits to Respondent's Motion for Decision state otherwise. Specifically, the affidavit of Robert B. Thomas, President of Taughannock Aviation Corp., states that "Daniel Dominguez is identified as PIC [pilot-in-command] on Legs 2 and 3 from Los Angeles, California to White Plains, New York then to Ithaca, New York".¹ Furthermore, the affidavit of Daniel Dominguez states that "I was PIC [pilot-in-command] on the January 18 2006, flight from Los Angeles, California to White Plains, New York and the January 19, 2006, flight from White Plains, New York to Ithaca, New York".² Furthermore, his affidavit states that "my name appears as PIC on the load manifest."³

Clearly, a genuine issue of material fact remains in dispute as to whether the load manifest, as read properly⁴, listed Captain Daniel Dominguez as the pilot-in-command on legs 2 and 3 of the flight. Therefore, the law judge's finding that "*Both parties agree* that the load manifest for this operation did not list Captain Dominguez as the pilot-in-command", is clearly in error.

¹ See Exhibit 3 attached to Respondent's Motion for Decision at para. 9.

² See Exhibit 4 attached to Respondent's Motion for Decision at para. 7.

³ See Exhibit 4 attached to Respondent's Motion for Decision at para. 8.

⁴ The Respondent's Motion for Decision describes in detail how the load manifest Form T101 must be read in conjunction with the Taughannock Aviation Operations Manual. For instance, Field Num 47 on Exhibit 2 states that it "represents the number(s) of those crew members **not on board the aircraft for this leg** from field 5 thru 10" (emphasis added). As a result, the load manifest as read correctly, clearly indicates that Captain Nielson was no longer on board the aircraft during legs 2 and 3 of the flight and that he had been replaced by Captain Dominguez as the pilot-in-command. The T101 Form and the Taughannock Aviation Operations Manual were both accepted by the FAA.

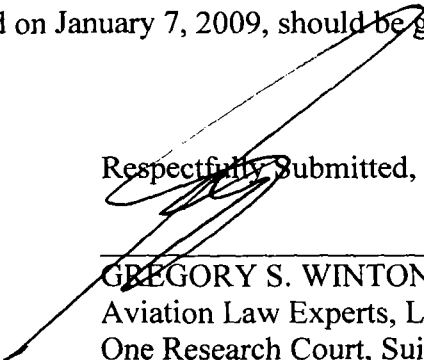
Specifically, Respondent has not and does not agree that the load manifest did not list Captain Dominguez as the pilot-in-command for those legs of the operation in question. As a result, it is obvious that a genuine issue of material fact exists and therefore, summary disposition was not appropriate. Therefore, it is likely that the FAA decisionmaker will reverse the law judge's Order Granting Complainant's Motion for Decision in Docket No. FAA-2007-0356, and remand the case for a full evidentiary hearing on the merits.

If Respondent is successful on the appeal of the law judge's Order Granting Complainant's Motion for Decision in Docket No. FAA-2007-0356, after the termination of the hearing of these consolidated matters, and if the FAA decisionmaker remands the case for evidence on the issue of whether the load manifest was accurate, it would require the Complaint, Respondent, and the law judge to hold another hearing on the merits, which would cause tremendous unnecessary costs and inconvenience to all parties involved. Therefore, in the interest of judicial economy, an interlocutory appeal for cause should be granted to avoid undue prejudice to all parties concerned.

WHEREFORE, in the interest of judicial economy, and in order to avoid undue prejudice to the parties, an interlocutory appeal of the Order Granting Complainant's Motion for Decision in Docket No. FAA-2007-0356 served on January 7, 2009, should be granted for cause.

Dated: January 14, 2009

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I hereby certify that I have this date served via U.S. mail, postage prepaid, the original and one (1) copy of the foregoing Request for Interlocutory Appeal addressed to:


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Washington, DC 20591
Attn. Hearing Docket Clerk AGC-430
Wilbur Wright Building – Room 2014

I hereby certify that I have this date served via U.S. mail, postage prepaid, a copy of the foregoing Request for Interlocutory Appeal addressed to:

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